BORA LASKIN LAW LIBRARY
3 1761 10083971 1

CASES AND MATERIALS ON TRUSTS

VOLUME TWO: CHARITABLE TRUSTS AND TRUSTS IMPOSED BY OPERATION OF LAW

Fall 1991

J. Phillips and R. Scane, Faculty of Law, University of Toronto. Compiled with the assistance of Lesley Midzain.

These materials are reproduced solely for the use of students in the Faculty of Law, University of Toronto.

Storage
KF
729
T75
1991
v 2

BORA LASKIN LAW LIBRARY
UNIVERSITY OF TORONTO

BORA LASKIN LAW LIBRARY
AUG 14 1991
FACULTY OF LAW
UNIVERSITY OF TORONTO

CASES AND MATERIALS ON TRUSTS

VOLUME TWO: CHARITABLE TRUSTS AND TRUSTS IMPOSED BY OPERATION OF LAW

Fall 1991

J. Phillips and R. Scane, Faculty of Law, University of Toronto. Compiled with the assistance of Lesley Midzain.

These materials are reproduced solely for the use of students in the Faculty of Law, University of Toronto.

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/casesmaterialson02scan_5

TABLE OF CONTENTS: VOLUME TWO

PART III - CHARITIES

CHAPTER 9 - THE LEGAL MEANING OF CHARITY - RELIEF OF POVERTY AND THE ADVANCEMENT OF RELIGION AND EDUCATION

a. Sources of Charity

Statute of Charitable Uses, 43 Eliz. 1, c. 4 (1601), preamble..... 281

Income Tax Commissioners v. Pemsel, [1891] A.C. 531 (H.L.)... 282

Re Laidlaw Foundation (1984), 13 D.L.R. (4th) 491 (Ont. Div. Ct.)..... 284

b. The Requirement of Exclusive Charitability

Brewer v. McCauley, [1954] S.C.R. 645..... 288

c. The Relief of Poverty

Jones v. Executive Officers of the T. Eaton Co. Ltd., [1973] S.C.R. 635..... 291

d. The Advancement of Education

Incorporated Council of Law Reporting for England and Wales v. Attorney General, [1972] Ch. 73 (C.A.)..... 298

Re Pinion, [1965] Ch. 85 (C.A.)..... 305

Oppenheim v. Tobacco Securities Trust Co. Ltd., [1951] A.C. 297 (H.L.)..... 310

e. The Advancement of Religion

Gilmour v. Coats [1949] A.C. 426 (H.L.)..... 318

Re Hetherington, [1989] 2 W.L.R. 1094 (Ch.)..... 324

CHAPTER 10 - OTHER PURPOSES BENEFICIAL TO THE COMMUNITY AND THE PROBLEM OF POLITICAL PURPOSES

a. Other Purposes Beneficial to the Community

Re Laidlaw Foundation (1984), 13 D.L.R. (4th) 491 (Ont. Div. Ct.)..... 329

Re Levy Estate (1989), 33 O.A.C. 99 (C.A.)..... 337

b. The Political Purposes Doctrine

National Anti Vivisection Society v. Inland Revenue Commissioners, [1948] A.C. 31 (H.L.)..... 342

McGovern v. Attorney General, [1982] 2 W.L.R. 222 (Ch.)..... 355

Re Positive Action Against Pornography and Minister of National Revenue (1988), 49 D.L.R. (4th) 74 (Fed. C.A.)..... 363

Globe and Mail, 9 Nov. 1989 and 25 Jan. 1990..... 369

CHAPTER 11 - AVOIDING THE EXCLUSIVITY RULE

Note - Severance..... 371

Guaranty Trust Co. v. M.N.R., [1967] S.C.R. 133..... 371

Re Public Trustee and Toronto Humane Society (1987), 60 O.R. (2d) 236 (H.C.)..... 382

O.L.R.C., "Draft Trustee Act", s. 81..... 387

CHAPTER 12 - CY-PRES

a. Impossibility or Impracticability

Rector, ect. of Parish of Christ Church v. Canada Permanent Trust Co. (1985), 18 E.T.R. 150 (N.S.S.C. - T.D.)..... 389

Re Canada Trust Co. and the Ontario Human Rights Commission (1990)..... 393

b. General Charitable Intention

Re Spence, [1979] Ch. 483..... 407

Re Fitzpatrick (1984), 16 E.T.R. 221 (Man. Q.B.)..... 413

O.L.R.C., "Draft Trustee Act", ss. 75 & 76..... 420

PART IV

TRUSTS ARISING BY OPERATION OF LAW

CHAPTER 13 - RESULTING TRUSTS FROM THE FAILURE OF EXPRESS TRUSTS

a. General Principles

Re Vandervell's Trusts (No. 2), [1974] Ch. 269 (C.A.)..... 421

Re Gillingham Bus Disaster Fund, [1958] Ch. 300..... 421

Trustee Act, S.N.S. 1967, c. 317..... 425

O.L.R.C., "Draft Trustee Act", ss. 76 and 77..... 426

b. Failure to Dispose of the Complete Beneficial Interest

Re Osaba, [1979] 1 W.L.R. 247 (C.A.)..... 427

Re the Trusts of the Abbott Fund, [1900] 2 Ch. 326..... 433

c. The Rule in Lassence v. Tierney

Hancock v. Watson, [1902] A.C. 14 (H.L.)..... 436

CHAPTER 14 - PURCHASE MONEY AND VOLUNTARY CONVEYANCE RESULTING TRUSTS

a. General Principles

Dewar v. Dewar, [1975] 1 W.L.R. 1532 (C.A.)..... 442

Neazor v. Hoyle (1962), 32 D.L.R. (2d) 131 (Alta. C.A.)..... 447

Standing v. Bowring (1885), 31 Ch. 282 (C.A.)..... 449

b. The Presumption of Advancement

Clemens v. Clemens Estate, [1956] S.C.R. 286..... 451

Family Law Act, S.O. 1986, c. 4..... 457

c. Joint Bank Accounts

Edwards v. Bradley, [1956] 2 D.L.R. (2d) 382 (Ont. C.A.)..... 457

d. Illegal Transactions

Maysels v. Maysels (1974), 45 D.L.R. (3d) 337 (C.A.)..... 463

CHAPTER 15 - THE TRUSTEE AS A FIDUCIARY AND CONSTRUCTIVE TRUSTS

Keech v. Sandford (1726), 25 E.R. 223..... 470

National Trust Co. v. Osadchuk, [1943] S.C.R. 89..... 470

Holder v. Holder, [1968] Ch. 253..... 474

Crocker and Croquip Ltd., v. Tornroos, [1957]..... 484

MacDonald v. Hauer (1977), 72 D.L.R. (3d) 110 (Sask. C.A.)... 490

CHAPTER 16 - OTHER FIDUCIARY RELATIONSHIPS, THE CONSTRUCTIVE TRUST, AND ALTERNATIVE REMEDIES

Boardman v. Phipps, [1967] 2 A.C. 46 (H.L.)..... 505

Peso Silver Mines Ltd. v. Cropper, [1966] S.C.R. 673..... 527

Canadian Aero Services Ltd. v. O'Malley, [1974] S.C.R. 592... 535

Guerin v. The Queen (1984), 13 D.L.R. (4th) 321 (S.C.C.)..... 551

Lac Minerals Ltd. v. International Corona Resources Ltd. (1989), 61 D.L.R. 4th 14 (S.C.C.)..... 565

CHAPTER 17 - UNJUST ENRICHMENT, THE CONSTRUCTIVE TRUST, AND ALTERNATIVE EQUITABLE REMEDIES

Rathwell v. Rathwell (1978), 83 D.L.R. (3d) 289 (S.C.C.)..... 599

Pettkus v. Becker (1980), 117 D.L.R. (3rd) 257 (S.C.C.)..... 614

Sorochan v. Sorochan (1986), 29 D.L.R. (4th) 1 (S.C.C.)..... 627

Rawluk v. Rawluk (1990), 23 R.F.L. (3d) 337 (S.C.C.)..... 636